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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PAULINE HORVATH,
Plaintiff,
v.
DONALD C. WINTER, Secretary of the
Navy,
Defendant.

Case No. C 07-04952 JSW

**[PROPOSED] ORDER GRANTING
DEFENDANT DONALD C. WINTER'S
MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

Date: February 15, 2008
Time: 9:00 a.m.
Courtroom 2, 17th Floor
Hon. Jeffrey S. White

Defendant Donald C. Winter's motion to dismiss for lack of subject matter jurisdiction came on for hearing on February 15, 2008 at 9:00 a.m. before the Honorable Jeffrey S. White. Having considered all papers filed in support of and in opposition to the motion, and having heard oral argument, the Court hereby **GRANTS** Defendant's motion to dismiss on the ground that this action was filed in violation of an order of the court dated March 26, 1999. In addition, the Court hereby **GRANTS** Defendants' motion to dismiss on the alternative ground that the

1 court lacks subject matter jurisdiction over plaintiff's claims because plaintiff failed to timely
 2 exhaust her administrative remedies. Title VII required plaintiff to exhaust her administrative
 3 remedies as a statutory precondition to suit. *Brown v. General Serv. Administration*, 425 U.S.
 4 820, 832-33, 96 S.Ct. 1961 (1976); *Vinieratos v. Dept. of the Air Force*, 939 F.2d 762, 767-68
 5 (9th Cir. 1991). Plaintiff failed to timely exhaust her administrative remedies because she failed
 6 to initiate EEO contact within the required period, and thus these claims were properly dismissed
 7 by the EEOC on April 16, 2007, as untimely. A federal employee seeking to pursue a complaint
 8 of discrimination must to contact an EEO counselor "within 45 days of the matter alleged to be
 9 discriminatory, or in the case of a personnel action, within 45 days of the effective date of the
 10 action." 29 C.F.R. § 16104.105(a)(1). Failure to contact an EEO counselor within the time
 11 specified precludes a federal employee from pursuing her claim in federal court. *Boyd v. U.S.*
 12 *Postal Service*, 752 F.2d 410, 414-15 (9th Cir. 1985); *see also Lyons v. England*, 307 F.3d 1092,
 13 1105 (failure to initiate timely EEO contact is "fatal to a federal employee's discrimination
 14 claim."). Plaintiff did not seek to file an EEO complaint until July 23, 1998, four years after she
 15 believed that she was discouraged her from filing EEO complaints, and nearly eight years after
 16 the latest non-selection for promotion of which she complains.

17 **IT IS SO ORDERED.**

18 Dated: _____

19 _____
 20 Jeffrey S. White
 21 United States District Judge
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[PROPOSED] ORDER GRANTING DEFENDANT WINTER'S MOTION TO DISMISS FOR LACK OF
 SUBJECT MATTER JURISDICTION

Case No. C07-4952 JSW